

AMENDED IN SENATE APRIL 17, 2012

**SENATE BILL**

**No. 1483**

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**Introduced by Senator Steinberg**

February 24, 2012

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An act to ~~amend Section 2842~~ add Article 14 (commencing with Section 2340) to Chapter 5 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1483, as amended, Steinberg. ~~Vocational nursing. Physicians and surgeons.~~

*Existing law provides for the licensing and regulation of physicians and surgeons by the Medical Board of California.*

*This bill would create the Physician Health Program, administered by the Physician Health, Recovery, and Monitoring Oversight Committee, with 14 members to be appointed as specified. The purpose of the program would be to promote awareness and education relative to physician and surgeon health issues, including impairment due to alcohol or substance abuse, mental disorders, or other health conditions that could affect the safe practice of medicine. The bill would provide for referral by the program of physicians and surgeons, as defined, to certified monitoring programs on a voluntary basis, governed by a written agreement between the participant and the program. The bill would require the Department of Consumer Affairs to select a contractor to implement the program, with the committee serving as the evaluation body for submitted proposals. The bill would require the committee to report to the department on the outcome of the program and would require regular audits of the program. The bill would enact other related provisions.*

~~Existing law, the Vocational Nursing Practice Act, provides for the licensure and regulation of the practice of vocational nursing by the Board of Vocational Nursing and Psychiatric Technicians of the State of California. The board is comprised of 11 members, including one member who is a licensed vocational nurse or registered nurse with specified experience as a teacher or administrator in an accredited school of vocational nursing.~~

~~This bill would instead require that experience to have been obtained in a board-approved school of vocational nursing. The bill would make other technical, nonsubstantive changes.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The Legislature finds and declares all of the*
- 2     *following:*
- 3     *(a) (1) It is in every patient's interest to have physicians and*
- 4     *surgeons that are healthy and well.*
- 5     *(2) Physicians and surgeons may have health conditions that*
- 6     *interfere with their ability to practice medicine safely.*
- 7     *(3) In such cases, the most effective long-term protection for*
- 8     *patients is early intervention to address health issues that have*
- 9     *the potential to interfere with the safe practice of physicians and*
- 10    *surgeons.*
- 11    *(b) While the Legislature recognizes that physicians and*
- 12    *surgeons have a number of options for obtaining treatment, it is*
- 13    *the intent of the Legislature in enacting this act to promote*
- 14    *awareness among members of the medical community about health*
- 15    *issues that could interfere with safe practice, to promote awareness*
- 16    *that private early intervention options are available, to provide*
- 17    *resources and referrals to ensure physicians and surgeons are*
- 18    *better able to choose high quality private interventions that meet*
- 19    *their specific needs, and to provide a separate mechanism for*
- 20    *monitoring treatment.*
- 21    *SEC. 2. Article 14 (commencing with Section 2340) is added*
- 22    *to Chapter 5 of Division 2 of the Business and Professions Code,*
- 23    *to read:*

Article 14. Physician Health, Awareness, and Monitoring  
Quality

2340. This article shall be known and may be cited as the Physician Health, Awareness, and Monitoring Quality Act of 2012.

2341. For purposes of this article, the following terms have the following meanings:

(a) “Board” means the Medical Board of California.

(b) “Committee” means the Physician Health, Awareness, and Monitoring Quality Oversight Committee established pursuant to Section 2343.

(c) “Department” means the Department of Consumer Affairs.

(d) “Impairment” means the inability to practice medicine with reasonable skill and safety to patients by reason of alcohol or substance abuse, a mental disorder, or another health condition as determined by a clinical evaluation in individual circumstances.

(e) “Participant” means a physician and surgeon enrolled in the program pursuant to an agreement entered into as provided in Section 2346.

(f) “Physician Health Program” or “program” means the program defined in Section 2342 and includes vendors, providers, or entities that contract with the committee pursuant to this article. The program itself shall not offer or provide treatment services to physicians and surgeons.

(g) “Physician and surgeon” means a holder of a valid physician and surgeon’s certificate. For the purposes of participating in the program under this article, “physician and surgeon” shall also mean a student enrolled in a medical school approved or recognized by the board, a graduate of a medical school enrolled in a medical specialty residency training program approved or recognized by the board, or a physician and surgeon seeking reinstatement of a license from the board.

(h) “Qualifying illness” means alcohol or substance abuse, a mental disorder, or another health condition that a clinical evaluation determines can be monitored and treated with private clinical and monitoring programs.

2342. The Physician Health Program shall do all of the following:

(a) Be available to all physicians and surgeons, as defined in subdivision (g) of Section 2341.

1 (b) Promote awareness among members of the medical  
2 community on the recognition of health issues that could interfere  
3 with safe practice.

4 (c) Educate the medical community on the benefits of and  
5 options available for early intervention to address those health  
6 issues.

7 (d) Refer physicians and surgeons to monitoring programs  
8 certified by the program by executing a written agreement with  
9 the participant and monitoring the compliance of the participant  
10 with that agreement.

11 (e) Provide for the confidential participation by physicians and  
12 surgeons who have a qualifying illness and that are not on  
13 probation with the board.

14 2343. (a) (1) There is hereby established the Physician Health,  
15 Awareness, and Monitoring Quality Oversight Committee that  
16 shall have the duties and responsibilities set forth in this article.  
17 The committee may take any reasonable administrative actions to  
18 carry out the responsibilities and duties set forth in this article,  
19 including, but not limited to, hiring staff and entering into  
20 contracts.

21 (2) The committee shall be formed no later than \_\_\_\_.

22 (3) The committee composition shall be as follows:

23 (A) All of the members under this subparagraph shall be  
24 appointed by the Governor and licensed in this state as physicians  
25 and surgeons with education, training, and experience in the  
26 identification and treatment of substance use or mental disorders,  
27 or both.

28 (i) Two members recommended by a statewide association  
29 representing psychiatrists with at least 3,000 members.

30 (ii) Two members recommended by a statewide association  
31 representing addiction medicine specialists with at least 300  
32 members.

33 (iii) Three members recommended by a statewide association  
34 representing physician and surgeons from all specialties, modes  
35 of practice, and practice settings with at least 25,000 members.

36 (iv) One member recommended by a statewide hospital  
37 association representing at least 400 hospitals.

38 (v) For the purpose of the initial composition of the committee,  
39 one member appointed under clause (i) shall be appointed for a  
40 two-year term and the other member for a three-year term; one

1 member appointed under clause (ii) shall be appointed for a  
2 two-year term and the other member for a three-year term; one  
3 member appointed under clause (iii) shall be appointed for a  
4 two-year term, one member shall be appointed for three-year  
5 term, and one member shall be appointed for a four-year term;  
6 and the member appointed under clause (iv) shall be appointed  
7 for a four-year term.

8 (B) All members appointed under this subparagraph shall have  
9 experience in a field related to mental illness, or alcohol or  
10 substance abuse, or both.

11 (i) Four members of the public appointed by the Governor. For  
12 the initial appointment to the committee, two members shall be  
13 appointed to serve for two-year terms and two members shall be  
14 appointed to serve for four-year terms.

15 (ii) One member of the public appointed by the Speaker of the  
16 Assembly. The initial appointment shall be for a three-year term.

17 (iii) One member of the public appointed by the Senate  
18 Committee on Rules. The initial appointment shall be for a  
19 three-year term.

20 (4) For the purposes of this section, a public member may not  
21 be any of the following:

22 (A) A current or former physician and surgeon or an immediate  
23 family member of a physician and surgeon.

24 (B) A current or former employee of a physician and surgeon,  
25 or a business providing or arranging for physician and surgeon  
26 services, or having any financial interest in the business of a  
27 physician and surgeon.

28 (C) An employee or agent or representative of any organization  
29 representing physicians and surgeons.

30 (D) An individual or an affiliate of an organization who has  
31 conducted business with or regularly appeared before the board.

32 (5) A public member shall meet all of the requirements for public  
33 members on a board as set forth in Chapter 6 (commencing with  
34 Section 450) of Division 1.

35 (b) Members of the committee shall serve without compensation.

36 (c) Except as provided for in subdivision (a), committee members  
37 shall serve terms of four years and may be reappointed.

38 (d) The committee shall be subject to the Bagley-Keene Open  
39 Meeting Act (Article 9 (commencing with Section 11120) of  
40 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government

1 Code) and the California Public Records Act (Chapter 3.5  
2 (commencing with Section 6250) of Division 7 of Title 1 of the  
3 Government Code).

4 (e) The rules adopted by the committee shall be consistent with  
5 Section 315, the guidelines of the Federation of State Physician  
6 Health Programs, Inc., as well as community standards of practice,  
7 including, but not limited to, criteria for acceptance of participants  
8 into the program and the refusal to accept a person as a participant  
9 into the program and the assigning of costs of participation and  
10 associated financial responsibilities of participants. In the event  
11 of any conflicts between standards established pursuant to Section  
12 315 and the guidelines of the Federation of State Physician Health  
13 Programs, Inc., and community standards of practice, Section 315  
14 shall prevail.

15 2344. (a) The department shall select a contractor for the  
16 Physician Health Program pursuant to a request for proposals,  
17 and the committee shall contract for a five-year term with that  
18 entity. The process for procuring the services for the program shall  
19 be administered by the department pursuant to Article 4  
20 (commencing with Section 10335) of Chapter 2 of Part 2 of  
21 Division 2 of the Public Contract Code. However, the committee  
22 shall serve as the evaluation body for the procurement.

23 (b) The chief executive officer of the program vendor shall have  
24 expertise in the areas of substance or alcohol abuse, and mental  
25 disorders in health care professionals.

26 (c) The program vendor shall have a medical director to oversee  
27 clinical aspects of the program's operations. The medical director  
28 shall have expertise in the diagnosis and treatment of alcohol and  
29 substance abuse and mental disorders in health care professionals.

30 (d) The program vendor shall have established relationships  
31 with local medical societies and hospital well-being committees  
32 for conducting education, outreach, and referrals for physician  
33 and surgeon health.

34 (e) The program vendor shall monitor the monitoring entities  
35 that participating physicians and surgeons have retained for  
36 monitoring the participant's treatment and shall provide ongoing  
37 services to physicians and surgeons that resume practice.

38 (f) The program vendor shall have a system for promptly  
39 reporting physicians and surgeons unable to practice safely to the  
40 board when, contrary to agreements with the Physician Health

1 *Program, they continue to practice unsafely. This system shall*  
2 *ensure absolute confidentiality in the communication to the*  
3 *enforcement division of the board, and shall not provide this*  
4 *information to any other individual or entity unless authorized by*  
5 *the enrolled physician and surgeon.*

6 *(g) The contract entered into pursuant to this article shall also*  
7 *require the program vendor to do both of the following:*

8 *(1) Report annually to the committee statistics related to the*  
9 *program, including, but not limited to, the number of participants*  
10 *currently in the program, the number of participants referred by*  
11 *the board as a condition of probation, the number of participants*  
12 *who have successfully completed their agreement period, the*  
13 *number of participants terminated from the program, and the*  
14 *number of participants reported by the program pursuant to*  
15 *subdivision (c) of Section 2346. However, in making that report,*  
16 *the program shall not disclose any personally identifiable*  
17 *information relating to any participant.*

18 *(2) Submit to periodic audits and inspections of all operations,*  
19 *records, and management related to the program to ensure*  
20 *compliance with the requirements of this article and its*  
21 *implementing rules and regulations, if any.*

22 *(h) In addition to the requirements of Section 2349, the*  
23 *committee shall monitor compliance of the program with the*  
24 *requirements of this article. The committee or its designee may*  
25 *make periodic inspections and onsite visits with the vendor*  
26 *contracted to provide Physician Health Program services.*

27 *(i) Copies of the audits referenced in paragraph (2) of*  
28 *subdivision (g) shall be published and provided to the appropriate*  
29 *policy committees of the Legislature within 10 business days of*  
30 *publication. A copy shall also be made available to the public by*  
31 *posting a link on the committee's Internet Web site homepage no*  
32 *more than 10 business days after publication.*

33 *2346. (a) A physician and surgeon shall, as a condition of*  
34 *participation in the Physician Health Program, enter into an*  
35 *individual agreement with the program.*

36 *(b) The agreement between the physician and surgeon and the*  
37 *program shall include all of the following:*

38 *(1) A jointly agreed-upon plan and mandatory conditions and*  
39 *procedures to monitor compliance with the program, including,*  
40 *but not limited to, an agreement to cease practice.*

1     (2) *Compliance with terms and conditions of treatment and*  
2 *monitoring.*

3     (3) *Limitations on practice.*

4     (4) *Conditions and terms for return to practice.*

5     (5) *Criteria for program completion.*

6     (6) *Criteria for termination of the participant from the program.*

7     (c) *In addition, if the physician and surgeon retains the services*  
8 *of a private monitoring entity, he or she shall agree to authorize*  
9 *the program vendor to receive reports from the private monitoring*  
10 *entity and to request information from the private monitoring entity*  
11 *regarding his or her treatment status. Except as provided in*  
12 *subdivisions (b), (c), (d), and (e), and subdivision (f) of Section*  
13 *2344, a physician and surgeon's participation in the program*  
14 *pursuant to an agreement shall be confidential unless waived by*  
15 *the physician and surgeon.*

16     (d) *Any agreement entered into pursuant to this section shall*  
17 *not be considered a disciplinary action or order by the board, and*  
18 *shall not be disclosed to the committee or the board if both of the*  
19 *following apply:*

20     (1) *The physician and surgeon did not enroll in the program as*  
21 *a condition of probation or as a result of an action of the board.*

22     (2) *The physician and surgeon is in compliance with the*  
23 *conditions and procedures in the agreement.*

24     (e) (1) *The program shall immediately report the name of a*  
25 *participant to the committee when it learns of the participant's*  
26 *failure to meet the requirements of the program including failure*  
27 *to cease practice when required or failure to submit to evaluation,*  
28 *treatment, or biological testing when required. The program shall*  
29 *also immediately report the name of a participant to the committee*  
30 *when it learns that the participant's impairment is not substantially*  
31 *alleviated through treatment, or if the participant withdraws or is*  
32 *terminated from the program prior to completion, or if, in the*  
33 *opinion of the program after a risk assessment is conducted, the*  
34 *participant is unable to practice medicine with reasonable skill*  
35 *and safety.*

36     (2) *Within two business days of receiving a report pursuant to*  
37 *paragraph (1), the committee shall refer the matter to the board.*

38     (f) *Except as provided in subdivisions (b), (c), and (e) and*  
39 *subdivision (f) of Section 2344, and this subdivision, any oral or*  
40 *written information reported to the board pursuant to this section,*

1 including, but not limited to, any physician and surgeon's  
2 participation in the program and any agreement entered into  
3 pursuant to this article, shall remain confidential as provided in  
4 subdivision (c) of Section 800, and shall not constitute a waiver  
5 of any existing evidentiary privileges under any other provision  
6 or rule of law. However, confidentiality regarding the physician  
7 and surgeon's participation in the program and of all information  
8 and records created by the program related to that participation  
9 shall not apply if the board has referred a participant as a  
10 condition of probation.

11 (g) Nothing in this section prohibits, requires, or otherwise  
12 affects the discovery or admissibility of evidence in an action by  
13 the board against a physician and surgeon based on acts or  
14 omissions within the course and scope of his or her practice.

15 (h) Any information received, developed, or maintained by the  
16 committee regarding a physician and surgeon in the program shall  
17 not be used for any other purposes.

18 2347. The committee shall report to the department statistics  
19 received from the program pursuant to Section 2344, and the  
20 department shall, thereafter, report to the appropriate policy  
21 committees of the Legislature on or before \_\_\_\_, and annually  
22 thereafter, the outcomes of the program, including, but not limited  
23 to, the number of individuals served, the number of participants  
24 currently in the program, the number of participants referred by  
25 the board as a condition of probation, the number of individuals  
26 who have successfully completed their agreement period, the  
27 number of participants terminated from the program, and the  
28 number of individuals reported to the board for noncompliance  
29 pursuant to subdivision (c) of Section 2346. However, in making  
30 those reports, the committee and the department shall not disclose  
31 any personally identifiable information relating to any physician  
32 and surgeon participating in the program pursuant to an agreement  
33 entered into pursuant to Section 2346.

34 2349. (a) The committee shall biennially contract to perform  
35 an audit of the Physician Health Program and its vendors. This  
36 section is not intended to reduce the number of audits the  
37 committee may otherwise conduct. The initial audit shall commence  
38 two years after the award of an initial five-year contract. Under  
39 no circumstances shall General Fund revenue be used for this  
40 purpose.

1 (b) Any person or entity conducting the audit required by this  
2 section shall maintain the confidentiality of all records reviewed  
3 and information obtained in the course of conducting the audit  
4 and shall not disclose any information identifying any program  
5 participant.

6 (c) The biennial audit shall be done by \_\_\_\_\_ and shall ascertain  
7 if the program is operating in conformance with the rules and  
8 regulations established by the committee.

9 ~~SECTION 1. Section 2842 of the Business and Professions~~  
10 ~~Code is amended to read:~~

11 ~~2842. (a) Each member of the board shall be a citizen of the~~  
12 ~~United States and a resident of the State of California. The board~~  
13 ~~shall have the following composition:~~

14 ~~(1) Two members shall be duly licensed vocational nurses who~~  
15 ~~have been licensed for a period of not less than three years prior~~  
16 ~~to appointment.~~

17 ~~(2) Two members shall be licensed psychiatric technicians, each~~  
18 ~~of whom shall have had not less than five years' experience in a~~  
19 ~~psychiatric hospital, or in a psychiatric unit of a hospital licensed~~  
20 ~~by the State Department of Health Care Services, or a private~~  
21 ~~institution licensed by the State Department of Health Care~~  
22 ~~Services.~~

23 ~~(3) One member shall be a licensed vocational nurse or~~  
24 ~~registered nurse who shall have had not less than five years'~~  
25 ~~experience as a teacher or administrator in a board-approved school~~  
26 ~~of vocational nursing.~~

27 ~~(4) Six members shall be public members who are not licentiates~~  
28 ~~of the board or any other board under this division or of any board~~  
29 ~~referred to in Sections 1000 and 3600.~~

30 ~~(b) No person may serve as a member of the board for more~~  
31 ~~than two consecutive terms.~~

32 ~~(c) Per diem and expenses of members of the board who are~~  
33 ~~licensed psychiatric technicians shall be paid solely from revenues~~  
34 ~~received pursuant to Chapter 10 (commencing with Section 4500)~~  
35 ~~of Division 2.~~